Keeshin Charter Service Inc. *and* Retail Clerks Union Local 1550, United Food and Commerical Workers International Union, AFL-CIO. Case 13-CA-20459

May 27, 1981

DECISION AND ORDER

Upon a charge filed on October 8, 1980, by Retail Clerks Union Local 1550, United Food and Commercial Workers International Union, AFL-CIO, herein called the Union, and duly served on Keeshin Charter Service Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Acting Regional Director for Region 13, issued a complaint and notice of hearing on November 19, 1980, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on August 1, 1980, following a Board election in Case 13-RC-14493, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate; and that, commencing on or about September 19, 1980, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On December 1, 1980, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On January 9, 1981, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on January 15, 1981, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed an answer to the Notice To Show Cause and motion to remand for hearing.

Upon the entire record in this proceeding,[1] the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answer to the Notice To Show Cause, Respondent denies the validity of the Union's certification on the ground that the Board erred by overruling its Objection 1 to the election held in Case 13-RC-14493.[2] Counsel for the General Counsel contends that Respondent is raising issues which were considered and resolved in the representation case, and that this it may not do. We agree.

The election in Case 13-RC-14493 was conducted on February 15, 1978, pursuant to a Decision and Direction of Election issued by the Regional Director for Region 13. The tally of ballots shows that, of approximately 32 eligible voters, 14 cast ballots for, and 14 against, the Union; there were 6 challenged ballots. Thereafter, Respondent filed timely objections to conduct affecting the results of the election. On April 4, 1978, the Regional Director issued and served on the parties his Supplemental Decision on the challenges and objections in which he recommended that Respondent's objections be overruled and that a hearing be held to resolve those issues raised by all six challenged ballots. Respondent subsequently filed with the Board a timely request for review in which it asserted that the Regional Director had erred in overruling its Objection 1. On May 10, 1978, the Board denied the request for review.[3]

Thereafter, on May 9, 1978, the Regional Director issued an order whereby the issues raised by the challenged ballots in Case 13-RC-14493 were consolidated for hearing before an administrative law judge with unfair labor practice charges in Cases 13-CA-16799 and 13-CA-17002. The Administrative Law Judge subsequently issued his Decision on May 31, 1979, recommending, *inter alia*, that the challenges to five ballots be overruled and that the challenge to the sixth ballot be sustained. After Respondent filed exceptions to the Administrative Law Judge's Decision, the Board issued its Decision, Order, and Direction on July 18, 1980,[4]

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[1] Official notice is taken of the record in the representation proceeding, Case 13-RC-14493, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir. 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); *Intertype Co.* v. *Penello*, 269 F.Supp. 573 (D.C.Va. 1967); *Follett Corp.*, 164 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

[2] Respondent's answer also denies that the Union has requested or that it has refused to bargain. Attached to the General Counsel's Motion for Summary Judgment is a letter dated September 17, 1980, from the Union to Respondent requesting bargaining. Counsel for the General Counsel states that Respondent subsequently made no response to the Union's letter. In its answer to the Notice To Show Cause, Respondent neither alludes to nor controverts the foregoing statements nor the letters attached to the Motion for Summary Judgment. Thus, the factual allegations in the complaint concerning the request and refusal to bargain stand uncontroverted. *Schwartz Brothers, Inc., and District Records, Inc.*, 194 NLRB 150 (1971); *The May Department Stores Company*, 186 NLRB 86 (1970); and *Carl Simpson Buick, Inc.*, 161 NLRB 1389 (1966).

[3] Then-Member Truesdale would have directed a hearing to resolve those issues raised by Respondent's Objection 1.

[4] 250 NLRB 780.

wherein it ordered, *inter alia*, that the challenges to four ballots be overruled and that the challenges to the two remaining ballots be sustained. Accordingly, the Board directed that the Regional Director for Region 13 open and count those ballots to which challenges had been overruled, and that he thereafter prepare a revised tally of ballots and issue an appropriate certification. Thereafter, a revised tally of ballots issued which showed that the Union had received a majority of the ballots cast in the election held in Case 13-RC-14493. Accordingly, on August 1, 1980, the Regional Director certified the Union as the exclusive collective-bargaining representative of Respondent's employees in the appropriate unit.

It thus appears that, by raising the matters set forth in its Objection 1, Respondent is attempting to raise issues which were raised and decided in the underlying representation case.[5]

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.[6]

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding.[7] Accordingly, we grant the General Counsel's Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Keeshin Charter Service Inc. maintains its office and principal place of business in Chicago, Illinois, where it is engaged in the business of providing interstate and intrastate transportation services for charter bus passengers. In the course and conduct of its business operations, Respondent annually purchases and receives at its Chicago, Illinois, facility goods and materials valued in excess of $50,000 directly from points located outside the State of Illinois. During the past calendar year, a representative period, Respondent derived gross revenues in excess of $250,000 from the operation of its bus transportation services.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

Retail Clerks Union Local 1550, United Food and Commercial Workers International Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Representation Proceeding*

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time charter bus drivers, mechanical employees and maintenance employees employed by the Employer at its facility now located at 705 South Jefferson, Chicago, Illinois 60607; excluding all office clerical employees, all guards and supervisors as defined by the Act.

2. The certification

On February 15, 1978, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 13, designated the

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[5] Respondent's answer to the Notice To Show Cause also contains, as noted, a motion requesting that the Board reopen the record in Case 13-RC-14493 and direct a hearing as to those issues raised by its Objection 1. In support of its motion, Respondent contends that it was denied due process when the Regional Director overruled its Objection 1 without directing a hearing to resolve credibility conflicts between the statements of employee witnesses and the Board agent who conducted the election. In overruling this objection, however, the Regional Director concluded that the evidence submitted in support thereof does not warrant setting the election aside under the version of any of the witnesses who were present when the alleged objectionable conduct occurred. The Board subsequently denied Respondent's request for review as raising no substantial or material issues warranting review. Moreover, it is well established that parties do not have an absolute right to a hearing on objections, and that denial of a hearing where, as here, the objections raise no substantial and material issues does not constitute denial of due process or a violation of Respondent's rights. *GTE Lenkurt, Incorporated*, 218 NLRB 929 (1975); *Abbott Laboratories, Ross Laboratories Division*, 217 NLRB 859 (1975); *Heavenly Valley Ski Area, a California Corporation, and Heavenly Valley, a Partnership*, 215 NLRB 734 (1974). Accordingly, Respondent's motion is hereby denied.

[6] See *Pittsburgh Plate Glass Co.* v. *N.L.R.B.*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

[7] Although Member Zimmerman did not participate in the underlying representation proceeding, he considers the Board bound to grant summary judgment without regard to the merits of the issue Respondent now attempts to relitigate. See *Bravos Oldsmobile*, 254 NLRB No. 135 (1981).

Union as their representative for the purpose of collective bargaining with Respondent. The Union was certified as the collective-bargaining representative of the employees in said unit on August 1, 1980, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. *The Request To Bargain and Respondent's Refusal*

Commencing on or about September 19, 1980, and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about September 19, 1980, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondent has, since September 19, 1980, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent, set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962); *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Keeshin Charter Service Inc. is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Retail Clerks Union Local 1550, United Food and Commercial Workers International Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All full-time and regular part-time charter bus drivers, mechanical employees and maintenance employees employed by the Employer at its facility now located at 705 South Jefferson, Chicago, Illinois 60607; excluding all office clerical employees, all guards and supervisors as defined by the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since August 1, 1980, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about September 19, 1980, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Re-

lations Board hereby orders that the Respondent, Keeshin Charter Service Inc., Chicago, Illinois, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Retail Clerks Union Local 1550, United Food and Commercial Workers International Union, AFL-CIO, as the exclusive bargaining representative of its employees in the following appropriate unit:

> All full-time and regular part-time charter bus drivers, mechanical employees and maintenance employees employed by the Employer at its facility now located at 705 Jefferson, Chicago, Illinois 60607; excluding all office clerical employees, all guards and supervisors as defined by the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its facility in Chicago, Illinois, copies of the attached notice marked "Appendix."[8] Copies of said notice, on forms provided by the Regional Director for Region 13, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 13, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Retail Clerks Union Local 1550, United Food and Commercial Workers International Union, AFL-CIO, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

> All full-time and regular part-time charter bus drivers, mechanical employees and maintenance employees employed by the Employer at its facility now located at 705 Jefferson, Chicago, Illinois, 60607; excluding all office clerical employees, all guards and supervisors as defined by the Act.

KEESHIN CHARTER SERVICE INC.

[8] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."